IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 18TH DECEMBER 2006 / 27TH AGRAHAYANA 1928

WP(C).No. 24914 of 2006(N)

PETITIONERS:

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1. ST.MARY'S JACOBITE SYRIAN ORTHODOX CHURCH, THODUPUZHA KARA, THODUPUZHA VILLAGE, THODUPUZHA TALUK, REP. BY ITS TRUSTEE M.C.SHIBU, S/O.CHACKO & RESIDING AT MAMALAKUNNATH HOUSE, THODUPUZHA KARA, THODUPUZHA VILLAGE, THODUPUZHA TALUK.

2. M.C.SHIBU, S/O.CHACKO AND RESIDING AT MAMALAKUNNATH HOUSE, THODUPUZHA KARA, THODUPUZHA VILLAGE, THODUPUZHA TALUK.

3. BENNY ELIAS, S/O.ELIYAS AND RESIDING AT APPOZHATHU HOUSE, MUTTAM KARA, MUTTAM VILLAGE, THODUPUZHA TALUK.

4. KURIAKOSE MATHAI, S/O.MATHAI, RESIDING AT KUSILATHUPUTHENPURAYIL, KUNNATHUPARA, MANACAUD VILLAGE, THODUPUZHA TALUK.

BY ADV. SRI.SAJAN VARGHEESE K.

RESPONDENTS:

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1. REV.FR.P.C.CHERIAN, S/O.CHACKO, RESIDING AT PALAKKATTUMMALIL HOUSE, KEEZHILLAM KARA, RAYAMANGALAM VILLAGE, KUNNATHUNAD TALUK, ERNAKULAM DISTRICT.

2. REV.FR.PRINCE JOHN, S/O.FR.JOHN, AND RESIDING AT KALAPPURACKAL HOUSE, KINGINIMATTOM KARA, EZHAKKARANADU VILLAGE, ERNAKULAM DISTRICT.

3. DR.ABRAHAM VARGHESE, S/O.VARGHESE, AND RESIDING AT KULIRANKAL HOUSE, THODUPUZHA KARA, THODUPUZHA VILLAGE, THODUPUZHA TALUK.

4. P.C.DAVID, S/O.CHERU AND
RESIDING AT PULIKKOTTIL HOUSE, KUNNATHUPARA KARA,
MANACADU VILLAGE, THODUPUZHA TALUK.

5. A.P.VARGHESE, S/O.PAULOSE AND
RESIDING AT ALAMKULAM HOUSE,
VENGALLOOR KARA, KUMARAMANGALAM VILLAGE,
THODUPUZHA.

6. M.J.THOMAS, S/O.JOHN AND
RESIDING AT MATTATHIL HOUSE, THODUPUZHA KARA,
THODUPUZHA VILLAGE, THODUPUZHA TALUK.

7. A.V.THOMAS, S/O.VARGHESE AND
RESIDING AT IYAKARAKUKDIYIL HOUSE,
KANJIRAMATTOM KARA, THODUPUZHA VILLAGE,
THODUPUZHA TALUK.

BY ADV. SRI.BIJU ABRAHAM -R1 & 2
SRI. S. SREEKUMAR-R3.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.9C)24914/06

APPENDIX

PETITIONERS EXHIBITS

EXT.P1: TRUE COPY OF PLAINT DATED 16.4.04 IN O.S.32/05 ON THE FILE OF DISTRICT COURT, ERNAKULAM.

EXT.P2: TRUE COPY OF WRITTEN STATEMENT FILED BY DEFENDANTS 1 AND 4 TO 6 IN O.S.32/05 ON THE FILE OF DISTRICT COURT, ERNAKULAM.

EXT.P3: TRUE COPY OF KALPANA DATED 25.11.2000 ISSUED BY PATRIARCH.

EXT.P4: TRUE COPY OF LETTER DATED 11.04.04 SUBMITTED BY RESPONDENT NO.1 TO THE BISHOP MATHEWS MAR IVANIOUS.

EXT/P5: TRUE COPY OF KALPANA DATED 25.04.04 SENT BY BISHOP MATHEWS MAR IVANIOUS TO THE PETITIONER NO.1

EXT.P6: TRUE COPY OF PHOTOGRAPH SHOWING THE PERFORMANCE OF SERVICE OF RESPONDENT NO.1 WITH THE BISHOP MATHEWS MAR IVANIOUS.

EXT.P7: TRUE COPY OF A PROGRAMME NOTICE DATED 20.02.05 ISSUED BY 1ST RESPONDENT.

EXT.P8: TRUE COPY OF KALAPANA DATED 14.02.05 ISSUED BY DIOCESAN METROPOLITAN

EXT.P9: TRUE COPY OF RECEIPTS (5NOS.) DATED 28.2.05, 28.3.05, 8.01.06 & 26.2.06 ISSUED BY DIOCESE TO THE PETITIONER NO.1

EXT.P10: TRUE COPY OF I.A.3790/05 IN O.S.32/05 DATED 14.11.05 ON THE FILE OF DISTRICT COURT, ERNAKULAM.

EXT.P11: TRUE COPY OF COUNTER AFFIDAVIT FILED IN I.A.3790/05 IN O.S.32/05 ON THE FILE OF DISTRICT COURT, ERNAKULAM.

EXT.P12: TRUE COPY OF REPLY AFFIDAVIT DATED 1.2.06 FILED IN I.A.3790/05 IN O.S.32/05 ON THE FILE OF DISTRICT COURT, ERNAKULAM.

EXT.P13: TRUE COPY OF ORDER DATED 13.07.06 PASSED IN I.A.3790/05 IN O.S.32/05 ON THE FILE OF DISTRICT COURT, ERNAKULAM.

RESPONDENTS EXHIBTIS

EXT.R1(A): TRUE COPY OF COMPLAINT DATED 18.8.04 TO THE CIRCLE INSPECTOR OF POLICE, THODUPUZHA.

EXT.R1(B): TRUE COPY OF KALPANA DATED 6.9.98 OF DIOCESAN METROPOLITAN, H.G. DR. THOMAS MAR ATHENASIUS.

EXT.R1(C): TRUE COPY OF KALPANA DATED 17.8.02 OF H.G.DR. THOMAS MAR ATHENASIUS, METROPOLITAN.

EXT.R1(D): A TRUE COPY OF WRITTEN STATEMENT FILED BY D2 & D3 IN O.S.32/05 DATED 12.11.05.

EXT.R1(E): TRUE COPY OF NOTICE OF PARISH ASSEMBLY WITH AGENDA DATED 21.3.04.

EXT.R1(F) TRUE COPY OF LETTER DATED 30.10.06 OF MATHEW EVANIOUS.

EXT.R1(G): TRUE COPY OF REPLY DATED 15.11.06.

/TRUE COPY/

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.24914 OF 2006

DATED THIS THE 18th DAY OF DECEMBER, 2006

JUDGMENT

This petition is filed under Article 227 of Constitution of India challenging Ext.P13 order passed by learned District Judge in I.A.3790/05 in O.S.32/05 on the file of District Court, Ernakulam. I.A.3790/05 was filed by defendants 2 and 3 seeking a direction to defendants 4 to 6 to pay their salary from July 2004 onwards at the rate of Rs.2,500/- per month till the disposal of the suit.

2. Learned District Judge under Ext.P13 order allowed the application and directed defendants 4 to 6 to pay the salary as prayed for, holding that the fact that defendants 2 and 3 are working as Vicar and Assistant Vicar of the church was not disputed and the fact that they are entitled to receive the salary was also not disputed and the only contention raised was that salary will be disbursed only from the Aramana and therefore defendants 2 and 3 have to receive the salary from Aramana. In this petition, petitioners are challenging Ext.P13 order contending that the very application is not maintainable as it is an application filed by second defendant against the other defendants and the relief sought for in the application is not a relief to be granted

in the suit and therefore the interlocutory application itself will not lie. It was also contended that defendants 2 and 3 are governed by 2002 Constitution and not 1934 Constitution as claimed by plaintiffs and therefore the salary could be disbursed only as per the rules governing them and under 2002 Constitution and therefore Ext.P13 order is to be quashed.

3. Learned Counsel appearing for petitioners and respondents were heard.

4. Arguments of learned Counsel appearing for petitioners was that inspite of notice directing defendants 2 and 3 to receive the salary from the Aramana, they did not receive the salary and instead sent reply refusing to receive the salary from the Aramana and therefore non disbursement of the salary was only due to their on fault and petitioners cannot be compelled to disburse the salary otherwise than in accordance with rules governing petitioners and 2002 Constitution and therefore Ext.P13 order is to be quashed. Learned Counsel further argued that as no interlocutory application will lie seeking an order by some of the defendants against the other defendants and that too when the reliefs sought for was not sought in the suit and therefore Ext.P13 order is to be quashed.

5. Learned Counsel appearing for respondents 1 and 2 argued that entitlement of the salary was not disputed and they cannot be compelled to go to Aramana of the opposite group to

receive the salary and in such circumstances, there is no reason to interfere with Ext.P13 order.

6. Even though, it was vehemently argued that petition by defendants 2 and 3 against other defendants will not lie and the relief sought for by them is not a relief to be granted in the suit, in the peculiar facts and circumstances of this case, I cannot agree with the arguments. The dispute in the suit is with regard to the administration of the church. When plaintiffs contend that 1934 Constitution governs the church, defendants 4 to 6 contend that 2002 Jacobites Syrian Church Constitution governs the church. When the question of administration of the church is to be decided in the suit, it cannot be said that the liability to pay the salary of the Vicar and Asst. Vicar of the church is not a matter that has to be decided by the court in the suit. In such circumstances, even though the salary is sought to be disbursed by defendants 4 to 6, it cannot be said that the application is unsustainable or Ext.P13 order is illegal.

7. Then the question is whether defendants 2 and 3 are to be compelled to go to the Aramana of defendants 4 to 6 as canvassed by petitioners or the amount has to be disbursed, as directed by learned District Judge. The question is in exercise of the extraordinary jurisdiction of this Court, even if it is found that the order is not fully in accordance with the rules, if the bye product

of the order is rendering justice, whether the order is to be interfered in. Petitioners did not dispute the fact that defendants 2 and 3 are working as Vicar and Asst. Vicar of the church. It is also not disputed that they are entitled to the salary. Infact the very case of the petitioners was that their salary has already been remitted in the Aramana for disbursement . The only question then is whether it is to be disbursed from Aramana or whether defendants 2 and 3 are entitled to receive the same from the church. Learned Sub Judge directed payment of salary from the church. If petitioners feel that it is not feasible ,they are at liberty to send the salary by money order. So also they are at liberty to deposit the amount before the District Court. In that event defendants 2 and 3 are entitled to receive to withdraw the salary from Court. It is made clear that this judgment will not be treated as a precedent in respect of church matters.

M.SASIDHARAN NAMBIAR,JUDGE

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